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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re M.G., a Person Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

C.G.,

Defendant and Appellant.

G042885

(Super. Ct. No. DP017408)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Douglas
Hatchimonji, Judge. Affirmed.

Michael D. Randall, under appointment by the Court of Appeal, for
Defendant and Appellant.

Nicholas S. Chrisos, County Counsel; Karen L. Christensen and Debbie
Torrez, Deputies County Counsel, for Plaintiff and Respondent.

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C.G. (mother) appeals from the juvenile court's order terminating her parental rights to her son, now 22-month-old M.G. (Welf. & Inst. Code, § 366.26; all further undesignated statutory references are to this code; for ease of reference, we will shorten statutory subdivision citations as follows, for example, § 366.21(e).) Mother argues the juvenile court violated due process by not providing a contested evidentiary hearing at the first review (see § 366.21(e)) held after the court concluded, in its dispositional order, that M.G. could not be returned safely to mother's care. The record does not support mother's contention. Rather, mother avoided the review hearing, had been absent for months after absconding a second time from her juvenile probation placement, and she failed to visit M.G. more than once or truthfully provide her location to her Orange County Social Services Agency (SSA) social worker. Accordingly, the issue of whether M.G. could safely be returned to mother at the review hearing was a moot point, since she could not be found. Given that the juvenile court invited mother's counsel to present evidence on mother's whereabouts, and that counsel was free to cross-examine SSA workers on their conclusion mother could not be found, there was no due process violation. Mother also raises an appellate claim under the Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. § 1901 et seq. At the detention hearing, however, she expressly denied Native American ancestry. Consequently, her contentions reversal is required because the juvenile court failed to inquire further or secure from her a written denial of native heritage are without merit. We therefore affirm the termination order.

I

FACTUAL AND PROCEDURAL BACKGROUND

SSA placed a hospital hold on M.G. in late summer 2008 soon after his birth in a City of Orange hospital. SSA place the hold and eventually took custody of

M.G. because Los Angeles County authorities returned then 17-year-old mother back to custody after she ran away from a juvenile probation placement. Her probation status stemmed from two arrests for soliciting prostitution during stints in which she ran away from her placement as a dependent of the Los Angeles County juvenile court. She had a history of auditory and visual hallucinations, bipolar disorder and depression, having been hospitalized on at least three occasions for threatening suicide and homicide. At the detention hearing, mother denied Native American ancestry and, before she was transported back to juvenile hall in Los Angeles, the juvenile court ordered her to keep the court informed of her current residence.

SSA transported M.G. for a visit with mother at juvenile hall. Mother appeared happy to see M.G., but needed assistance in protecting his safety and caring for him, including knowing when to change his diaper.

Probation authorities placed mother at the Florence Crittenton Home in Orange County, where the staff expressed concern at her history of absconding from the facility. Within two weeks, she fled, but was found and returned to Los Angeles juvenile hall. Another less restrictive placement failed in January 2009 when mother again ran away. In mother's absence, the juvenile court sustained the dependency petition alleging she failed to protect M.G. or provide for his support. (§ 300(b), (g).) By late February SSA submitted a search declaration and recommended no reunification services be provided because mother could not be found. The court continued the disposition hearing for a month, but mother failed to turn up or make contact with SSA; nor had her attorney been able to locate her. The court declared M.G. a dependent and denied mother reunification services because her whereabouts were unknown. (§ 361.5(b)(1).)

More than a month later, on March 31, 2009, mother contacted her social worker for the first time, by telephone. She initially claimed she was in California, but when the worker asked where, mother stated she was actually in Mexico. She refused to provide her address, but provided two phone numbers where she could be reached. The worker advised mother of the next court date in mid-April and suggested she contact her attorney and probation authorities. After the call, the social worker determined mother had provided Arizona telephone numbers. She called one of the numbers and left a message with the male who answered. Mother called back and, when confronted with the Arizona area code, stated she was in Yuma, Arizona. She provided an address, but claimed she was moving back to California. The social worker advised her to make contact on her return so she could visit M.G. She never did so.

At the mid-April review hearing, SSA recommended the juvenile court schedule a hearing to select a permanent plan for M.G. under section 366.26 (.26 hearing). But the juvenile court instead continued the review hearing for a month, so mother's counsel could investigate mother's whereabouts and consider the reasonableness of SSA's efforts to locate her. On April 21, the social worker followed up on the Yuma address mother provided, only to find the occupant at that telephone number, Monica Martinez, denied mother lived or received mail there. Mother contacted the social worker by phone the next day, claiming Yuma remained her mailing address, but she was presently in California. Advised that Martinez denied she lived at the Yuma address, mother changed her story and claimed she lived in San Pedro, California, providing an address and telephone number. The social worker sent notice of the review hearing's continued date in May to mother at the Yuma and San Pedro addresses, but both were returned undeliverable, without a forwarding address.

Mother called the social worker at the end of April stating she wanted to visit M.G. that day, which the social worker arranged. But mother canceled the appointment and rescheduled for the next day. At the visit, mother claimed she now lived in Carson and provided an address. She scheduled another visit a week later, on May 8. That visit lasted 15 minutes, during which mother commented that M.G., at eight months old, no longer seemed to know her. Mother's eyes welled up, she could not console M.G. when he cried and, at the end of the visit, she did not kiss him goodbye or interact with him. Mother did not appear at the mid-May review hearing; her attorney had been unable to contact her and had no information on her whereabouts. At the end of the hearing, rather than return M.G. to mother, who could not be found, the juvenile court concluded "continued supervision [was] necessary" for M.G. and that "the child's placement is necessary and appropriate." The court also set the .26 hearing for September 2009, where the juvenile court eventually terminated mother's parental rights. Mother now appeals.

II

DISCUSSION

A. *Based on Mother's Flight and Unknown Whereabouts, She Was Not Entitled to a Hearing to Return M.G. to Her Physical Custody at the Six-Month Review*

Mother contends the juvenile court violated due process by failing to hold a contested evidentiary hearing under section 366.21(e) at the six-month review (hereafter .21(e) hearing).¹ The purpose of the .21(e) inquiry is to "order the return of the child to the physical custody of his or her parent or legal guardian" unless doing so would be

¹ County counsel concedes that though mother did not pursue a writ petition from the order setting the .26 hearing, she is entitled to raise a claim pertaining to the six-month review hearing because the record does not reflect she received notice of her right to seek writ review. (*In re Cathina W.* (1998) 68 Cal.App.4th 716, 718.)

detrimental to the child. (*Ibid.*) Specifically, subdivision (e) provides, in pertinent part: “At the review hearing held six months after the initial dispositional hearing, . . . the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment.” (*Ibid.*) Given that mother could not be located, we have no difficulty concluding she suffered no due process violation; simply put, having chosen to hide her location, there was no way for the juvenile court to return M.G. to her physical custody. It follows that conducting a hearing on whether to return M.G. to her physical custody would have been a pointless undertaking. (Civ. Code, § 3532 [“The law neither does nor requires idled acts”]; accord, *In re Vincent S.* (2001) 92 Cal.App.4th 1090, 1093-1094.)

Moreover, as county counsel points out, the juvenile court earlier had denied mother reunification services in its dispositional order because she could not be found at that time either. (See § 361.5(a) & (b)(1) [reunification services need not be ordered at disposition when “the whereabouts of the parent . . . [are] unknown”].) By its terms, section 366.21(e) provides that a hearing on the return of the child to the parent’s custody need not be held at the six-month review when, “pursuant to [s]ection 361.5, the court has ordered that reunification services shall not be provided.” (§ 366.21(e).) That being the case here, the process to which mother was entitled did not include a .21(e) hearing on the return of M.G. to her care. Thus, as noted, depriving mother of a .21(e) hearing did not violate her due process rights because such a hearing would be a useless gesture given mother’s absence and unknown whereabouts.

Mother complains she had a due process right to “present evidence to contradict [SSA’s] report” concerning her unknown whereabouts, and “a right to cross-examine the preparer of the report.” While both those assertions are true (*In re James Q.* (2000) 81 Cal.App.4th 255, 265), the juvenile court denied mother neither right. To the contrary, in advance of the review hearing, the court expressly invited mother’s counsel to litigate “the location of . . . mother” and “the reasonableness of [SSA]’s actions” in trying to locate her. At the hearing, the court also invited mother’s counsel to object to SSA’s reports and specifically queried, “[I]s there any other evidence that . . . mother wishes to offer at this point in time?” Mother merely submitted on the admission of the reports and offered no evidence. She now argues that, “[a]t a minimum, she was still entitled to cross-examine the preparer of [SSA]’s court report before it was admitted into evidence.” But mother made no effort to do so. “Absent an objection to proceeding without [the social worker’s] examination and with no request . . . at the hearing for her production, [mother] has not been deprived of her right of confrontation.” (*In re Corey A.* (1991) 227 Cal.App.3d 339, 348.) Consequently, mother’s due process challenge lacks merit.

B. No ICWA Violation

Mother asserts reversal is required because the juvenile court and SSA failed to meet “an affirmative and continuing duty” of inquiry under section 224.3(a) concerning whether M.G. “is or may be an Indian child” (*Ibid.*) We find no error.

Congress passed ICWA to combat “abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes.” (*Mississippi Choctaw Indian Band v. Holyfield* (1989) 490 U.S. 30, 32.) “Both the

juvenile court and [SSA] have an affirmative duty to inquire whether a child declared a dependent minor of the juvenile court qualifies as an Indian child for ICWA purposes. [Citation.]” (*In re Glorianna K.* (2005) 125 Cal.App.4th 1443, 1449.) Here, the detention report reflects SSA complied with its duty to ask mother whether she knew of any Indian heritage. Also, the court made its own inquiry at the detention hearing, fulfilling its duty in three different ways by asking mother if she were aware of any American Indian ancestry in her family, whether she was an enrolled member of any tribe, and whether she knew of any blood relatives who were tribe members. Nothing suggests SSA or the court breached their continuing duties under ICWA. (See Cal. Rules of Court, rule 5.481(a)(4)(A) [SSA’s duty of “further inquiry” arises only when it “knows or has reason to know that an Indian child is or may be involved”]; see also § 224.3(f) [receipt of “new information” requires court and SSA to provide notice to appropriate tribes and Bureau of Indian affairs].)

Mother suggests the juvenile court owed mother a greater than usual duty of inquiry because mother was a minor at the time of the detention hearing. But the contention is a non sequitur, since the court could only inquire, as it did, into her heritage, having no superior knowledge of, or transcendent ability to reveal, her ancestry.

Relying on *In re J.N.* (2006) 138 Cal.App.4th 450 (*J.N.*), mother insists the juvenile court’s failure to order mother to complete and submit a written Parental Notification of Indian Status form (ICWA-020; see rule 5.481(a)(2)) should not be deemed harmless. But unlike in *J.N.*, the court here inquired on the record whether mother had Indian ancestry. (Compare *J.N.*, *supra*, at p. 461.) As we observed in *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1413, the juvenile court’s “obligation is only one of inquiry and not an absolute duty to ascertain or refute Native American ancestry.”

And “[u]nless the juvenile court has some further basis on which to predicate the belief a child is an Indian under the Act, the court is not required to make further inquiry.” (*In re Levi U.* (2000) 78 Cal.App.4th 191, 198.) Here, the court fulfilled its inquiry duty and no subsequent developments revealed any basis for additional inquiry. Accordingly, we discern no error, nor any conceivable basis for reversal. (See *In re N.E.* (2008) 160 Cal.App.4th 766, 769 [reversal unwarranted “where there is absolutely no suggestion by [father] that he in fact has any Indian heritage”]; *In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1431 [same]; accord, Cal. Const., art. II, § 13.)

III

DISPOSITION

The juvenile court’s order terminating mother’s parental rights is affirmed.

ARONSON, J.

WE CONCUR:

MOORE, ACTING P. J.

FYBEL, J.